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July 23, 2001

By Hand

David Waddell
Executive Secretary
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, Tennessee 37243

*Re: Docket to Determine the Compliance of BellSouth Telecommunications, Inc.'s
Operations Support Systems with State and Federal Regulations*

Docket No. 01-00362

Dear Mr. Waddell:

Please find enclosed the original and thirteen copies of AT&T Communications of the South Central States, Inc. and TCG MidSouth, Inc. motion to strike BellSouth's unsolicited pre-filed written testimony in this docket.

If there any questions about this filing, please do not hesitate to call me.

Respectfully submitted,


Jim Lamoureux

Enclosures

cc: Parties of Record

**BEFORE THE
TENNESSEE REGULATORY AUTHORITY**
Nashville, Tennessee

In re:)
Docket to Determine the)
Compliance of BellSouth)
Telecommunications, Inc.'s)
Operational Support Systems with)
State and Federal Regulations)

Docket No.: 01-00362

**MOTION ON BEHALF OF
AT&T COMMUNICATIONS OF THE SOUTH CENTRAL STATES, INC.
AND TCG MIDSOUTH, INC. TO STRIKE BELL SOUTH'S
UNSOLICITED PRE-FILED WRITTEN TESTIMONY**

AT&T Communications of the South Central States, Inc. and TCG MidSouth, Inc. ("AT&T") moves to strike the unsolicited testimony filed by BellSouth Telecommunications, Inc. ("BellSouth") in this docket on June 21, 2001.¹ The Tennessee Regulatory Authority ("Authority") should strike BellSouth's testimony because it was not authorized by any procedural order in this docket, is premature, and contravenes the spirit of the process established by the Hearing Officer and the Authority for this proceeding.

PROCEDURAL BACKGROUND

At the February 21, 2001, Directors Conference (the "Directors Conference"), the Authority voted to establish this docket. The results of that vote were subsequently incorporated into the Authority's order dated May 15, 2001 (the "May 15th Order"). In the *May 15th Order*, the Authority explained that "the necessity for third party testing hinged on the applicability of

¹ On June 21, 2001, BellSouth filed the testimony of Messrs. Coon, Ainsworth, Scollard, Pate, and Heartley in this docket.

testing previously undertaken by Georgia and Florida as well as BellSouth's ability to demonstrate its compliance with the performance measurements through Service Quality Measurements ('SQMs')." *May 15th Order* at 6. The Authority also explained its concern that at least some testing and performance data from other states would not be indicative of performance in Tennessee. *Id.* at 6-7. Accordingly, the Authority stated that it "will order Tennessee specific testing in those situations in which BellSouth cannot demonstrate compliance through its SQMs or reliance on the Georgia and Florida testing cannot indicate Tennessee performance." *Id.* at 7.

The *May 15th Order* stated that this docket was "convened to determine the areas of OSS testing in which reliance on existing data or test results from other states is not possible and to conduct any required testing." *Id.* at 8. To determine what areas will require testing, the Authority decided to "retain an independent third party to analyze the existing data and test results from other states and to determine whether the data demonstrates compliance with the standard performance measures and whether the test results are applicable to Tennessee." *Id.* at 8. The "standard performance measures" against which the independent third party would determine compliance would be developed in a separate docket (Docket No. 01-00193) that also was established by the May 15th Order.

At the Directors Conference, the Directors had voted unanimously to appoint Director Greer to act as the Pre-Hearing Officer in the two generic dockets (Docket Nos. 01-00193 and 01-00362). On May 3, 2001, Director Greer issued the First Report and Recommendation of Pre-Hearing Officer in Docket No. 01-00362 ("First Report.") that recommended a particular procedure for the docket. Specifically, Director Greer recommended adoption of a two phase approach. In Phase I, the Authority would "engage an independent third party consultant to

determine what, if any, testing of BellSouth's OSS is needed" and then "the selected consultant would prepare and submit to the Authority a Phase I report." *First Report* at 4-5. Director Greer further recommended that, upon completion of the consultant's Phase I report, "the Authority convene a hearing for the purpose of receiving testimony and documenting evidence from the consultant and interested parties." *Id.* Upon completion of the hearing, the Authority would decide whether to proceed with Phase II (i.e., actual testing). The Authority unanimously adopted Director Greer's recommendations on May 15, 2001.

ARGUMENT

Neither the *First Report* nor the *May 15th Order* requested or authorized the filing of testimony at this time (or at any particular time) in this docket. To the contrary, the *First Report* expressly provided for the filing of testimony **after** the preparation and submission of the consultant's Phase I report. Nevertheless, BellSouth filed unsolicited testimony in this docket regarding the "regionality" of its OSS. The Authority should strike that testimony for several reasons.

First, the Authority should strike the testimony because BellSouth has preempted the Authority and created its own procedure for this docket. The *First Report*, which was adopted by the Authority, established the procedure to be followed in this docket. Rather than complying with that procedure or proposing a change for the Hearing Officer to consider and rule upon, BellSouth effectively preempted the Hearing Officer by filing unsolicited testimony. The Authority should not condone BellSouth's presumptuousness by allowing the testimony to remain in the record.

Second, the Authority should strike the testimony because it is premature. This docket cannot reasonably proceed until the Authority completes its work on performance measurements

in Docket No. 01-00193. Indeed, by letter dated July 3, 2001, the Authority advised its prospective third party consultant that “[s]ince the Authority is in the process of establishing generic performance standards, benchmarks, and enforcement mechanisms, it would be premature to conduct such an audit at this time.” *Authority letter to KPMG Consulting* dated July 3, 2001. The test results in Georgia and Florida, moreover, are not yet complete. Before standard performance measures are established by the Authority or test results are completed in Georgia and Florida, it is impossible for the third party consultant to analyze whether existing data or future test results from other states can demonstrate compliance with those yet-to-be-determined performance measures, which is precisely the purpose of this docket. Consequently, testimony filed now will likely be stale and obsolete by the time the Authority conducts a hearing in which the testimony would be presented.

Finally, the Authority should strike the testimony because it contravenes the spirit of the process adopted by the Hearing Officer and would otherwise disrupt the orderly and efficient progression of this Docket. The point of hiring an independent third party is to avoid as much as possible the back and forth finger pointing of litigation and to narrow the possible scope of issues which require litigation. By filing testimony before the Authority has even hired the independent third party evaluator, BellSouth has contravened the spirit of that process. BellSouth has fired the first shot at turning this proceeding once again into full blown protracted litigation concerning BellSouth’s OSS.

Obviously, if the Authority allows BellSouth’s testimony to remain in the record, CLECs will want to present their direct case to the Authority, and to rebut BellSouth’s case. As previously noted, however, testimony filed at this time could not address the Phase I report, which will be focus of the Authority’s hearing in this docket. Which, of course, only means that

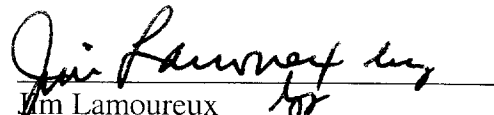
all parties will want to file even more testimony after the report is finished. Clearly, this is not what the Authority intended when it adopted the process established by the Hearing Officer.

In sum, the procedure set forth in the *First Report*, which calls for the filing of testimony after the consultant files its Phase I report, is eminently fair, logical, and reasonable. Allowing BellSouth to depart from that procedure will only serve to reward its unauthorized actions, clutter the record with stale testimony, and disrupt the orderly and efficient conduct of this docket. Accordingly, the Authority should strike the testimony that BellSouth has filed in this docket.

CONCLUSION

The Authority should not allow BellSouth to circumvent the orderly processes established in this docket. BellSouth's unsolicited testimony filed prematurely and out of process should be stricken.

Respectfully Submitted,


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Attorney for AT&T Communications of the
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MidSouth, Inc.

Dated: July 23, 2001

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing MOTION OF AT&T TO STRIKE BELL SOUTH'S UNSOLICITED PRE-FILED WRITTEN TESTIMONY in Docket No. 01-00362 was served by U.S. mail on the following parties of record this 23rd day of July 2001:

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